

EXHIBIT 5

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re STATIC RANDOM ACCESS
MEMORY (SRAM) ANTITRUST
LITIGATION

Case No. M:07-CV-01819-CW

MDL No. 1819

This Document Relates To:

ORDER RE DEPOSITIONS

ALL ACTIONS

10 The following limits shall apply to depositions taken in the above-captioned matter:

Number of Depositions

Percipient Witnesses

14 1. The direct and indirect plaintiffs collectively may depose up to 75 percipient
15 witnesses as part of the joint, coordinated discovery in this case with a maximum of twelve (12)
16 depositions for any individual Defendant Group,¹ as part of the joint, coordinated discovery in this
17 case.

18 2. The defendants collectively may take up to 30 percipient witness depositions, in
19 addition to a deposition of each class representative.

30(b)(6) Depositions

22 3. The direct and indirect plaintiffs collectively may take up to 12 hours of 30(b)(6)
23 depositions of each Defendant Group as part of the joint, coordinated discovery provided that the
24 deposition is in English. If a translator is used, there shall be up to 24 hours of 30(b)(6)

²⁶ ¹A "Defendant Group" refers to defendants that are part of the same corporate family, e.g., Hynix Semiconductor, Inc. and Hynix Semiconductor America, Inc. constitute a single Defendant Group.
²⁷ However, the Mitsubishi, Hitachi and Renasas Defendant Groups cannot collectively constitute more than two such Defendant Groups.

1 depositions. The parties shall meet and confer about 30(b)(6) topics and witnesses. These 30(b)(6)
2 depositions do not count towards the number of depositions of percipient witness depositions in
3 Paragraph 1.

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5 **Depositions on Issues Unique to Indirect Purchaser Claims**

6 4. The defendants and counsel for the indirect purchaser plaintiffs will meet and
7 confer on limits for additional depositions on issues unique to the indirect purchaser claims.

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9 **Deposition Locations**

10 5. In order to minimize the expense and inconvenience to parties, witnesses, and
11 counsel, as well as to permit immediate court intervention for ongoing depositions (if necessary),
12 depositions of foreign witnesses shall take place in the United States, unless the foreign witness
13 shows that it is more appropriate to have the deposition take place outside the United States. The
14 following principles and guidelines shall apply: (1) to the extent a witness recently or frequently
15 has traveled to the United States for business, or otherwise does business in the United States,
16 generally those witnesses' depositions will occur in the United States; (2) to the extent a witness
17 has managerial authority (and is thus subject to deposition notice pursuant to FRCP 30(b)(1)), the
18 depositions of such witnesses will occur in the United States; (3) depositions of a corporation
19 (pursuant to FRCP 30(b)(6)) will occur in the United States (the Northern District of California).
20 The requesting Party (or Parties) shall be responsible for payment of the reasonable travel and
21 lodging expenses for any non-30(b)(6) foreign witness produced in the United States. The parties
22 shall meet and confer regarding the locations to attempt to resolve any issues without Court
23 intervention. Disputes that cannot be resolved through the meet and confer process shall be
24 decided on an expedited basis by the Special Master through a telephonic hearing with no briefing
25 unless so ordered.
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1 **Deposition Rules**

2 **Stipulated And Agreed To Paragraph 6**

3 6. All depositions of party witnesses, as well as non-party witnesses represented by
4 counsel for any defendant, will be governed by the Federal Rules of Civil Procedure.

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6 **Fifth Amendment Depositions**

7 **Stipulated And Agreed To Paragraph 7**

8 7. Counsel for the defendant by whom a noticed deponent is employed will attempt in
9 good faith to notify plaintiffs ten (10) calendar days before the agreed-upon date of any deposition
10 if the deponent plans to invoke his or her Fifth Amendment privilege against self-incrimination at
11 the deposition. The parties recognize, however, that circumstances affecting a deponent's decision
12 whether to invoke the privilege may change at a time within that ten-day (10-day) period.
13 Moreover, individual deponents are not parties to this litigation and may be represented by
14 separate counsel. But when a former employee is represented by counsel for defendant, the same
15 good faith effort to provide notice about Fifth Amendment privileges should be provided as if the
16 witness were a current employee. Defendants do not exercise final control over the timing of
17 deponents' decisions about this matter, nor do they have the power to waive any individual's Fifth
18 Amendment rights. In the event that an employee deponent's decision changes within the ten-day
19 (10-day) period, counsel for the relevant defendant will notify plaintiffs as quickly as practicable
20 of the deponent's plans. Nothing in this provision shall be construed to affect the right of any
21 employee or deponent to invoke his or her Fifth Amendment privilege against self-incrimination.

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23 **Time Limits for Depositions**

24 **Paragraph 8**

25 8. All parties agree that there is a presumption that all depositions should be taken
26 within the allotted seven-hour time frame pursuant to the Federal Rule of Civil Procedure
27 30(d)(2), except if a translator is used for a deposition in which case there shall be a 14 hours time

1 limit. If a party determines that it is necessary to expand this time frame for any reason, this will
2 be negotiated on a witness-by witness basis.

3 **Representation and Availability of Witnesses**

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5 9. For each person that plaintiffs identify in writing as a witness whom they wish to
6 depose, counsel for defendant will respond within fourteen days providing the following
7 information: (1) whether the person is a current or former employee, (2) if a former employee,
8 whether counsel for defendant will represent the former employee; (3) available dates for
9 deposition; (4) if a foreign witness, proposed location for deposition; and (5) whether the witness
10 will testify in a foreign language. (For depositions already noticed or scheduled, to the extent they
11 have not already done so, Defendants will immediately provide such information.) Counsel for
12 defendant will accept service for former employees they represent.
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14 **Timeliness of Service**

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16 10. For party witnesses and non-party witnesses represented by counsel for defendants,
17 21 days shall be sufficient time to serve a notice of deposition or subpoena to secure the
18 attendance of a witness at a deposition, and to require production of documents at least two days
19 in advance of the deposition. Nothing in this provision, however, relieves the obligation of
20 counsel to negotiate in good faith to reach agreement on a deposition date.

21 **Other Matters**

22 **Stipulated And Agreed To Paragraph 11**

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24 11. The number of depositions permitted in this litigation may be expanded by
25 stipulation, or upon motion to the Court for good cause.
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1 **Stipulated And Agreed To Paragraph 12**

2 12. This Order does not limit any party's right to object to or seek a protective order
3 with respect to any deposition noticed in this case.

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6 IT IS SO ORDERED.

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8 DATED: Apr. 9, 2009



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10 HONORABLE FERN SMITH
11 UNITED STATES DISTRICT JUDGE (RET.)
12 SPECIAL MASTER

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